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BILL NO. S-96-12-04

SPECIAL ORDINANCE NO. S- 97-96

AN ORDINANCE ADDING SECTION 6.19 "DRUG AND ALCOHOL TESTING PROCEDURES" TO THE CITY OF FORT WAYNE POLICY AND PROCEDURE MANUAL.

WHEREAS, the City of Fort Wayne is dedicated to provide a safe and drug free workplace for its employees; and

WHEREAS, to provide uniform procedures pertaining to the testing of employees and applicants for employment to detect individuals having drugs or alcohol in their system, the City of Fort Wayne desires to add a new policy section to the City of Fort Wayne Policy & Procedure Manual entitled "Drug and Alcohol Testing Procedures."

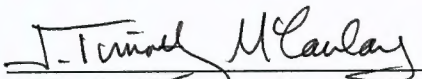
NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. Section 6.19 "Drug and Alcohol Testing Procedures" of the City of Fort Wayne Policy and Procedure Manual is hereby approved.

SECTION 2. This Ordinance shall be in full force and effect from and after its passage and any and all necessary approvals by the Mayor.


Council Member

APPROVED AS TO FORM AND LEGALITY


J. Timothy McCaulay, City Attorney

Read the first time in full and on motion by Crawford,
and duly adopted, read the second time by title and referred to the
Committee on Regulations (and the City Plan Commission
for recommendation) and Public Hearing to be held after due legal notice, at
the Common Council Council Conference Room 128, City-County Building, Fort
Wayne,, Indiana, on _____, 19____, the _____ day of _____
M., E.S.T.

DATED: 12-3-96

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Hay Hurst,
and duly adopted, placed on its passage. PASSED
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT:
TOTAL VOTES	9			
BENDER	✓			
CRAWFORD	✓			
EDMONDS	✓			
HALL	✓			
HAYHURST	✓			
HENRY	✓			
LUNSEY	✓			
RAVINE	✓			
SCHMIDT	✓			

DATED: 12-17-96

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)

(SPECIAL)

(ZONING)

ORDINANCE

RESOLUTION NO. 8-97-96

on the 17th day of December, 1996

ATTEST:

(SEAL)

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

DD Schmier
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 18th day of December, 1996,
at the hour of 11:30 o'clock A. M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 20th day of December,
1996, at the hour of 5:30 o'clock P. M., E.S.T.

PAUL HEIMKE
PAUL HEIMKE, MAYOR

DRUG AND ALCOHOL TESTING PROCEDURES

December 2, 1996

1. INTENT

The City of Fort Wayne is dedicated to providing a safe and drug free workplace. The City of Fort Wayne's employees are our most valuable resource and it is our goal to provide a healthy, satisfying working environment which promotes personal opportunities for growth. In meeting these goals, it is our intent to:

1. Assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner;
2. Create a workplace environment free from the adverse effects of drug abuse and alcohol misuse;
3. Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances and;
4. To encourage employees to seek professional assistance anytime personal problems, including alcohol or drug dependency, adversely affects their ability to perform their assigned duties.

2. PURPOSE OF EMPLOYEE DRUG AND ALCOHOL TESTING

This document provides a uniform procedure concerning the testing of employees or applicants for employment to detect individuals having drugs or alcohol in their system. The purpose of such testing is to provide employees, and the general public, work and service environments that are

free from the effects of drug and alcohol abuse. The City of Fort Wayne is committed to providing a safe work place for its employees that is free of the effects of substance abuse. Since the City of Fort Wayne is involved in public service, the community depends on careful attention by all employees. Such attention cannot be affected by the use of drugs and/or alcohol.

The use of any drug, including alcohol, can interfere with the safe and efficient functioning of the City's personnel, therefore, drug or alcohol abuse is a matter of the City of Fort Wayne's concern and will be dealt with in an appropriate manner.

The City of Fort Wayne expects employees to report for work in condition to perform their duties.

On-the-job involvement with drugs and/or alcohol is a violation of the City of Fort Wayne's policy and Federal law. The City of Fort Wayne also recognizes that employee off-the-job involvement with drugs and alcohol can have an impact on the work place and our ability to accomplish the goal of a safe, effective, drug and alcohol- free work environment.

3. APPLICABILITY

These procedures apply to all safety-sensitive and non-safety-sensitive employees, including paid part-time employees, temporary employees, volunteers, contract employees and contractors when they are on City of Fort Wayne property or when performing any safety-sensitive functions. They also apply to off-site lunch periods or breaks when an employee is scheduled to return to work. Visitors, vendors, and contractor employees are governed by these procedures while on City of Fort Wayne premises and will not be permitted to conduct City of Fort Wayne business if found to be in violation of these procedures.

A safety-sensitive function is any duty related to the safe operation of City of Fort Wayne vehicles

or equipment that affects public health and safety and the dispatch and maintenance of any vehicle or equipment used in public health and safety and any other employee who holds a Commercial Driver's License. A list of safety-sensitive positions is under definition 18.

4. PROHIBITED SUBSTANCES

"Prohibited substances" addressed by these procedures include the following:

- **Illegally Used Controlled Substances or Drugs**

Any illegal drug or substance identified in Schedules I through V Section 202 of the Controlled Substance Act (21 U.S.C. 812), as further defined by 21 CFR 1300.11 through 1300.15. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes the use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs.

- **Legal Drugs**

Employees who are taking prescription or non-prescription lawful drugs that may affect the performance of their job duties must report such usage to their immediate supervisor before beginning their work day. Such drugs used on the job may be determined to be allowable drugs if the medical review officer has determined that the use of the drug is consistent with safe performance of the employee's duties and the drug is being used at the prescribed dosage.

- **Alcohol**

The use of beverages containing alcohol or substances including any medication, mouthwash, food, candy, or any other substance such that alcohol is present in the body while performing City of Fort Wayne business is prohibited. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.

5. PROHIBITED BEHAVIOR

- Safety-sensitive and non-safety-sensitive employees shall not report for duty or remain on duty while having an alcohol concentration of 0.02 or greater.
- Safety-sensitive and non-safety-sensitive employees shall not possess alcohol while on duty or operating a City motor vehicle or other motorized equipment.
- The use of alcohol while performing their safety-sensitive or non-safety-sensitive job functions.
- Performing safety-sensitive and non-safety-sensitive functions within four hours of having used alcohol.
- The use of alcohol by safety-sensitive and non-safety-sensitive employees within eight hours following an accident, or before undergoing a post-accident alcohol test, whichever comes first.
- Reporting for duty, remaining on duty, or performing safety-sensitive and non-safety-sensitive functions after having tested positive for a controlled substance.
- Using, manufacturing, distributing, dispensing or possessing controlled substances.

- Refusal by a safety-sensitive or non-safety-sensitive employee to submit immediately to a chemical or alcohol test (reasonable suspicion, post-accident, and random) when requested.

All employees are required to notify the City of Fort Wayne of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction.

Failure to comply with this provision shall result in disciplinary action, up to and including termination.

The City of Fort Wayne is dedicated to assuring fair and equitable application of the Drug and Alcohol Testing procedures. Therefore, supervisors and managers are directed to use and apply all aspects of this procedure in an unbiased and impartial manner. Any supervisor or manager who knowingly disregards the requirements of this procedure, or who is found to deliberately misuse the procedure in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

6. DEFINITIONS

1. **"Accident"** - means an occurrence associated with the operation of a motor vehicle, other motorized equipment, or other accidents (i.e. injury on the job, falling, etc.) if, as a result:
 - An individual dies;
 - An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;
 - One or more of the vehicles involved incurs disabling damage as a result of the

occurrence and is transported away from the scene by a tow truck or another vehicle.

2. **"Alcohol"** - means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol. References to use or possession of any beverage, mixture or preparation containing ethyl alcohol (including any medication containing alcohol).
3. **"Alcohol Test"** - A test conducted by a Certified Breath Alcohol Technician, or any other person approved by the City of Fort Wayne Police Department, using an Evidential Breath Testing Device to measure the amount of alcohol concentration in a volume of breath.
4. **"Alcohol Use"** - The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
5. **"Breath Alcohol Technician (BAT)"** - means an individual trained and certified to proficiency in the use of an evidential breath testing device.
6. **"Canceled Test"** - means a test that has been declared invalid by a Medical Review Officer (MRO) for drug testing or for alcohol.
7. **"CDL"**- means a Commercial Driver's License.
8. **"Confirmation Test"** - For alcohol testing, a confirmation test means a second test following a screening test with a result of 0.02 or greater, that provides a quantitative data of alcohol concentration. Confirmation of the screening test must be by an Evidential Breath Testing (EBT) device listed on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL), and must be capable of

printing out each test result and air blank, and must sequentially number each test.

For controlled substances testing, a confirmation test means a second analytical procedure to identify the presence of a specific drug metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. Gas Chromatography Mass Spectrometry (GC/MS) is the authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.

9. **"Controlled Substances/Drugs"** - For purposes of these procedures, controlled substances or drugs are cocaine, marijuana, opiates, amphetamines, phencyclidine and any other substance determined by the U.S. Department of Transportation to be a controlled substance.
10. **"Controlled Substance (or Drug) Test"** - A method for determining the presence of controlled substances in a urine sample using a scientifically reliable method.
11. **"Employee"** - means any person employed by The City of Fort Wayne.
12. **"EAP"** - means an Employee Assistance Program provided by The City of Fort Wayne to assist its employees in dealing with drug or alcohol dependency or other personal problems.
13. **"Evidential Breath Testing Device (EBT)"** - A device approved by the NHTSA and placed on NHTSA's Conforming Products list and is used for the evidential testing of breath.
14. **"Medical Review Officer (MRO)"** - A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing

program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

15. "Non-negative Test Result (alcohol breath test result)" - An alcohol breath test result between .02 and .039.

16. "Performing a Safety-Sensitive Function" - An employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.

17. "Safety-Sensitive Function" - Any of the following duties:

- Operating a vehicle or equipment which is used to maintain public health and safety,
- Controlling dispatch or movement of a vehicle or equipment (dispatchers or those who as part of their job duties fill in for a dispatcher or cross-train):
- Maintaining a vehicle or equipment used in public health and safety (mechanics, service mechanics, service helpers, and vehicle washers)-,
- Operating equipment
- Parks & Recreation staff responsible for the daily supervision of children.

18. "Screening Test (also known as an "initial test") -

- In alcohol testing, a screening test means an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in his or her system.
- In controlled substances testing, a screening test means an immunoassay screen (or

other DHHS-approved test) to eliminate "negative" urine specimens from further consideration.

19. "Split Sample" - An additional sample collected with the original specimen, to be tested in the event the original specimen tests positive.

20. "Verified Negative Drug Test Results" - A drug test result reviewed by a Medical Review Officer and determined to have no evidence of prohibited drug use.

21. "Verified Positive Drug Test Results" - A drug test result reviewed by a Medical Review Officer and determined to have evidence of prohibited drug use.

8. CIRCUMSTANCES OF DRUG AND ALCOHOL TESTING Six drug and/or alcohol screening situations will be utilized by The City of Fort Wayne.

1. Pre-employment Testing: All safety-sensitive and non-safety-sensitive position applicants shall undergo urine drug testing immediately following the offer of employment or transfer into a safety-sensitive position. Receipt of a negative drug test result is required prior to employment. If an applicant refuses to be tested or fails the pre-employment drug test, the applicant will be disqualified for employment for a period of six months. A negative pre-employment drug test is required prior to further consideration for employment.

2. Post-accident Testing: Conducted after accidents on safety-sensitive and non-safety-sensitive employees if there was loss of life, an injury requiring transportation to a medical treatment facility, one or more vehicles incurs damage or the employee receives a citation under state or local law for a moving traffic violation, or if the employees'

performance could have contributed to the accident. Any safety-sensitive or non-safety-sensitive employee whose performance could have contributed to the accident, as determined by The City of Fort Wayne using the best information available at the time of the accident, will be given a drug and alcohol test. Post accident drug and alcohol tests must be conducted as soon as possible after the accident. Drug tests must be performed within 8 hours after the accident. Alcohol tests must be performed within 3 hours after the accident.

- 3. Reasonable Cause:** All safety-sensitive and non-safety-sensitive employees may be subject to a fitness for duty evaluation, and urine and/or breath testing when there are reasons to believe that drug or alcohol use is adversely affecting job performance. A reasonable suspicion referral for testing will be made on the basis of documented objective facts and circumstances which are consistent with the short-term effects of substance abuse. Examples of reasonable cause include, but are not limited to the following:

1. Physical signs and symptoms consistent with prohibited substance use.
2. Evidence of the manufacture, distribution, dispensing, possession, or use of controlled substances, drugs, alcohol, or other prohibited substances.
3. Occurrence of a serious or potentially serious accident that may have been caused by prohibited substance abuse or alcohol misuse.
4. Fights (to mean physical contact), assaults, and flagrant disregard or violations of established safety, security, or other operating procedures.

Reasonable cause referrals must be made by one supervisor (two supervisors are preferred)

who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited abuse or misuse. The questioned conduct must be witnessed and documented in writing.

4. **Random:** Conducted on employees who perform safety-sensitive functions on a random, unannounced basis just before, during, or just after performance of safety-sensitive functions. Each year, at least 25% of all employees performing safety-sensitive functions will be tested for drugs. All safety-sensitive employees will remain in the random selection pool at all times, regardless of whether or not they have been previously selected for testing. Random testing will be conducted in accordance with procedures established by the City's Risk Management Department.
5. **Return-to-duty:** Safety-sensitive and non-safety-sensitive employees who have previously refused to take a drug or alcohol test, or failed such a test, shall be tested for prohibited drug or alcohol use before they return to duty. The employee must first be certified as capable of resuming duties. Any such employee, once returned to duty may be administered unannounced follow-up drug and alcohol tests for up to 60 months after their return to duty.
6. **Follow-up:** Once allowed to return to duty, safety-sensitive and non-safety-sensitive employees shall be subject to unannounced follow-up testing for at least 12 but not to exceed 60 months. The frequency and duration of the follow-up testing will be recommended by Risk Management as long as a minimum of six tests are performed during the first 12 months after the employee returns to duty. Follow-up testing is separate from and in addition to the random testing program.

9. SUBSTANCES TO BE INCLUDED IN TESTING

Alcohol (Ethanol), amphetamines, cannabinoids (marijuana), cocaine, opiates, phencyclidine (PCP), and their metabolites will be included. Because The City of Fort Wayne is concerned about the abuse of prescribed and over-the-counter medications as well as illegal drugs and alcohol, the above list may be expanded to include yet to be developed substances, changes in The City of Fort Wayne policy, or changes to Federal laws and regulations.

10. DRUG TESTING PROCEDURES

The City of Fort Wayne shall identify and select only qualified medical laboratories certified by DHHS/NIDA/SAMHSA to perform the urinalysis testing described by these procedures.

Appointments for urine collection for drug screens will be coordinated by The City of Fort Wayne Department of Risk Management. The specimens will be collected at special facilities that optimize confidentiality and observe DPT collection procedures. The collection facility must adhere to the collection provisions set forth in the "DHHS" regulations entitled "Mandatory Guidelines for Federal Work place Drug Testing Programs 53FR (11970) published April 11, 1988 known as "DHHS Guidelines" and 49 CFR Part 40, as amended. A strict chain of custody will be maintained on the specimen as described in the "DHHS Guidelines". In the event that a non-designated collection facility must be used, the supervising employee contacting the facility must insure that the facility is properly advised concerning the collection requirements as described in the "DHHS Guidelines." Record keeping and reporting of all drug testing and results shall be in strict accordance with Federal guidelines to protect the confidentiality of the employees.

If there is concern about an individual's ability to function safely, that individual will be provided transportation to their home after completion of the drug testing. Supervisors will always transport employees to the collection site.

11. DRUG TESTING CUTOFF LEVELS

• Initial Test

The initial test shall use an immunoassay that meets the requirements of the Food and Drug Administration for commercial distribution. The most current NIDA/SAMHSA cutoff levels shall be used when screening specimens to determine whether they are negative for these drugs. Current cutoff levels are:

Initial Test Cutoff Levels (ng/ml)	
Marijuana Metabolites (cannabinoids)	50
Cocaine Metabolites	300
Opiate Metabolines*	300
Phencyclidine	25
Amphetamines	1,000
*25 ng/ml if immunoassay specific for free morphine	

1. These cutoff levels are subject to change by the DHHS as advances in technology or other considerations warrant.

- **Confirmation Test**

All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/N4S) techniques using the most current NIDA/SANMSA cutoff levels. The current cutoff levels are:

<u>Confirmatory Test Cutoff Levels (ng/ml)</u>	
Marijuana Metabolite(1)	15
Cocaine Metabolite(2)	150
Opiates:	
Morphine	300
Codeine	300
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine(3)	500

(1) Delta-9 tetrahydrocannabinol-9-carboxylic acid.

(2) Benzoylecgonine

(3) Specimen must also contain amphetamine at a concentration equal to or greater than 200 ng/ml.

1. These cutoff levels are subject to change by the DHHS and/or the DOT as advances in technology or other considerations warrant.

- **Split Sample Testing**

The employee may request, within 72 hours of notification of a positive test by the MRO, that the split sample be tested at a separate DHHS certified laboratory. This request must be made in writing to the MRO. The results of the split sample test shall be the final test results that are reported to the employer by the MRO. The cost for transportation and testing of the split sample is the sole responsibility of the employee and must be paid for in advance. If results from the split sample are negative, the City of Fort Wayne will reimburse the employee.

12. EFFECTS OF ALCOHOL

Alcohol is a socially acceptable drug that has been consumed throughout the world for centuries. It is considered a recreational beverage when consumed in moderation for enjoyment during social gatherings. However, when consumed primarily for its physical and mood altering effects, it is a substance of abuse. As a depressant, it slows down physical responses and progressively impairs mental functions.

1. Signs and Symptoms of Use

1. Dulled mental processes
2. Lack of coordination
3. Odor of alcohol on breath
4. Possible constricted pupils
5. Sleepy or stuporous condition
6. Slowed reaction time

7. Slurred speech

(Note: Except for the odor, these are the general signs for any depressant substance.)

2. Health Effects

The chronic consumption of alcohol (average of three servings per day of beer (12 ounces), whiskey (1 ounce), or wine (6 ounce glass) over time may result in the following health hazards:

1. Decreased sexual functioning
2. Dependency
3. Fatal liver diseases
4. Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
5. Kidney disease
6. Pancreatitis
7. Spontaneous abortion and neonatal mortality
8. Ulcers
9. Birth defects (up to 54% of all birth defects are alcohol related)

3. Social Issues

- 1 Two-thirds of all homicides are committed by people who drink prior to a crime.
- 2 Two to three percent of the driving population is legally drunk at any one time. This rate is doubled at night and on weekends.
- 3 Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.

4. The rate of separation and divorce in families with alcohol dependency problems is seven times the average.
5. Forty percent of family court cases are alcohol problem related.
6. Alcoholics are 15 times more likely to commit suicide than are other segments of the population.
7. More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.

4. Workplace Issues

1. It takes one hour for the average person (150 pounds) to process one serving of an alcoholic beverage from the body.
2. Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
3. A person who is legally intoxicated is six times more likely to have an accident than a sober person.

5. The Annual Toll

1. 24,000 people will die on the highway due to the legally impaired driver.
2. 12,000 more will die on the highway due to the alcohol-affected driver.
3. 15,800 will die in non-highway accidents.
4. 30,000 will die due to alcohol-caused liver disease.

Up to another 125,000 will die due to alcohol-related conditions or accidents.

6. Intervention

Employees are advised that The City of Fort Wayne provides an Employee Assistance

Program as part of its employee benefit program. Employees who may have a problem with alcohol consumption or illegal drug use are highly encouraged to take advantage of this program. Non-jeopardy referrals or voluntary participation in the program is desired.

13. ALCOHOL TESTING PROCEDURES

Alcohol testing will only be conducted using evidential breath testing devices in accordance with 49 CFR part 654.

Breath testing will be coordinated by The City of Fort Wayne Department of Risk Management. The breath specimen will be conducted at a site that optimizes confidentiality. The collection site must adhere to the collection provision set forth in 49 CFR Part 654. A strict chain of custody will be maintained on the specimen. All record keeping will be in strict accordance with Federal regulations.

If there is concern about an individual's ability to function safely, the individual will be provided transportation to their home after completion of the testing. Supervisors will always transport employees to the test site.

Alcohol breath testing will be performed in the following manner in accordance with 49 CFR Part 654:

1. Screening Test

The initial test shall be done using an EBT in accordance with 49 CFR Part 654. If the initial test results are less than .02 alcohol concentration, the results are negative and will be reported by the BAT as such. If the initial test results are .02 or greater, a second or confirmatory test must be conducted.

2. Confirmation Test

The confirmatory test must be conducted on the same EBT as the initial test in accordance with 49 CFR Part 654. Before the confirmatory test may be given, a minimum of 15 minutes and maximum of 20 minutes must have passed since the initial test was performed. During this period, the employee should avoid any actions that could increase mouth alcohol. The 15-20 minute wait period is to ensure that the presence of mouth alcohol does not artificially raise the test result.

Only the results of the confirmatory test shall be reported, irrespective of the results on the initial test. If the results of the initial and confirmatory tests are not identical, the confirmation test result is deemed to be the final test result.

If the results of the confirmatory test is less than .02 alcohol concentration, a negative result shall be reported by the BAT.

If the results of the confirmatory test are .02 or greater but less than .04 alcohol concentration (non-negative results), the employee must be removed from his/her safety-sensitive or non-safety-sensitive position for eight hours or longer and be referred to mandatory evaluation by the Department of Risk Management. Based on the Risk Management evaluation, the employee may be subject to the involuntary rehabilitation procedures set forth in Section XIX as well as other disciplinary measures up to termination.

If the results of the confirmatory test show an alcohol concentration of .04 or greater, the employee must be removed from his/her safety-sensitive or non-safety-sensitive position, be informed about educational and rehabilitative programs, and be evaluated by the Risk Management Department. The determination of the Risk Management Department will guide

further decision regarding continued rehabilitation and employment of the employee. See Section XIV Positive Test/Refusal to Test.

14. POSITIVE TEST/REFUSAL TO TEST

A positive substance abuse test is a violation of The City of Fort Wayne's policy. A safety-sensitive or non-safety-sensitive employee who refuses to submit to a drug and/or alcohol test, will be considered to have failed the test. Failure to comply with the request for drug/alcohol testing will be just cause for termination.

If a positive test for drugs is reported by the medical review officer, it is understood that the screening test was positive and a second confirmatory test, based on a different scientific principle was also positive. The acceptable method of confirmation is: gas chromatography/mass spectrometry (GC/MS). Failing a drug test will result in an immediate termination of employment.

If a positive test for alcohol (.04 or above) is reported, it is understood that the positive test was the result of the confirmation test on an EBT. Failing an alcohol test will result in an immediate termination of employment. City of Fort Wayne employees with positive drug/alcohol screens will be informed in a meeting with their supervisor and/or department manager. If the employee is a member of a union, a Union Representative may be present, if requested by the employee.

15. BEHAVIOR THAT CONSTITUTES A REFUSAL TO SUBMIT TO A TEST

Behavior that constitutes a refusal to submit to a test includes, but is not limited to, the following:

- Refusal to take the test.
- Inability to provide sufficient qualities of breath or urine to be tested without a valid medical explanation.
- Tampering with or attempting to adulterate the specimen or collection procedure.
- Not reporting to the collection site in the allotted time.
- Leaving the scene of an accident without a valid reason before the test has been conducted.

16. CONDITION OF EMPLOYMENT

Participation in The City of Fort Wayne Drug and Alcohol Testing program is a requirement of safety-sensitive and non-safety-sensitive employees and therefore, is a condition of employment.

17. CHANGES OR MODIFICATIONS

The City of Fort Wayne reserves the right to change the provisions of this testing procedure. All personnel and Unions will be notified at least 15 calendar days prior to instituting the changes. Changes required by Federal, State and/or Local law will not require advance notification.

18. VOLUNTARY REHABILITATION

In an effort to meet the purpose of this drug and alcohol procedure, The City of Fort Wayne wants to provide a program that will be helpful to employees. The City of Fort Wayne maintains an Employee Assistance Program available to all employees. The purpose is to provide access to professional services to aid the employee who has an alcohol or drug problem, or other personal

problems that may affect job performance.

All employees are encouraged to use this program's resources before their employment status is affected. Voluntary participation treatment programs will not prevent disciplinary action(s) for procedure violations that have already occurred.

Supervisors can assist in contacting the Employee Assistance Program. At the conclusion of treatment, arrangements for drug screen follow-up testing will be made. Specific guidelines will be agreed upon by management, supervisors and the rehabilitated employee at the time the employee returns to work.

The City of Fort Wayne's EAP provider and telephone number is: Life Plan, Sandra Tobin, 219 481-2888. The 24 hour hotline is 1-800-552-0985.

19. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

(Excerpts taken from the February 15, 1994;Federal Register (59 FR 731 1) for your reference.

The Americans with Disabilities Act of 1990 (ADA) does not, in any way, preclude or interfere with the employer's compliance with the Department's new or existing drug and alcohol testing regulations. However, Title I of ADA, which prohibits discrimination against a "qualified individual with a disability," may affect the personnel actions an employer may wish to take with respect to some individuals who test positive for drugs or alcohol, or otherwise violate the prohibitions of the Department's drug and alcohol rules.

The ADA specifically authorizes employers covered by DOT regulations to require their employees to comply with the standards established in those regulations, including complying with any rules that apply to employment in safety-sensitive positions as defined in the DOT

regulations. Under the ADA, an employer is not viewed as "discriminating" for following the mandates of DOT drug and alcohol rules.

The ADA specifically provides that an employee or applicant who is currently engaging in the illegal use of drugs is not a "qualified individual with a disability." It is clear that an individual who has a positive test result on a DOT mandated drug test is currently engaging in the illegal use of drugs. Therefore, under Title 1, an employer may discharge or deny employment to an individual who has a positive result on a US DOT-mandated drug test.

Unlike the situation with respect to current use of illegal drugs, the use of alcohol contrary to law, Federal regulation, or employer policy does not deprive an individual of status as a "qualified individual with a disability" that he or she would otherwise have under Title 1. An individual is protected by Title 1, however, only if the individual has a disability in the first place. While, as the EEOC notes in its Title I regulation, "individuals disabled by alcoholism are afforded the same protections accorded other individuals with disabilities" (56 CFR 35752, July 26, 1991), not all individuals who use alcohol in violation of the law, Federal regulations of employer policy are "disabled by alcoholism."

Under Title 1, an employer may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance as it holds other employees, even if the unsatisfactory performance or behavior is related to the drug use or alcoholism of the employee.

It should also be pointed out that the ADA does not preclude an employer from disciplining or dismissing an employee who commits a violation of the employer's conduct and performance standards, even if the individual is an alcoholic or has another disability.

21. CONTACT PERSONS

Debby Anderson	Manager, Risk Management	427-1164
Brenda Brown	Labor Relations Specialist	427-1458



The City of Fort Wayne

Paul Helmke, Mayor

Memorandum

To: MEMBERS OF COMMON COUNCIL
From: PAYNE D. BROWN, DIRECTOR, PUBLIC SAFETY/HUMAN RESOURCES
Date: December 2, 1996
Re: CITY OF FORT WAYNE POLICY AND PROCEDURE NUMBER 6.19 ENTITLED
"DRUG AND ALCOHOL TESTING PROCEDURES."

This Ordinance is being introduced to simply add Section 6.19 "Drug and Alcohol Testing Procedures" to the City of Fort Wayne Policy and Procedure Manual.

DIGEST SHEET

TITLE OF ORDINANCE SPECIAL ORDINANCE

DEPARTMENT REQUESTING ORDINANCE HUMAN RESOURCES

SYNOPSIS OF ORDINANCE ADDS SECTION 6.19 "DRUG AND ALCOHOL TESTING PROCEDURES"
TO THE CITY OF FORT WAYNE POLICY & PROCEDURE MANUAL.

EFFECT OF PASSAGE SECTION 6.19 IS ADDED TO THE POLICY & PROCEDURE MANUAL.

EFFECT OF NON-PASSAGE SECTION 6.19 IS NOT ADDED TO THE POLICY & PROCEDURE
MANUAL.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) _____

ASSIGNED TO COMMITTEE (PRESIDENT) _____

BILL NO. S-96-12-04

REPORT OF THE COMMITTEE ON
REGULATIONS
REBECCA J. RAVINE - THOMAS E. HAYHURST - CO-CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) adding Section 6.19 "Drug
and Alcohol Testing Procedures" to the City of Fort Wayne Policy
and Procedure Manual

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

<u>Thomas E. Hayhurst</u>	<u></u>	<u></u>	<u></u>
<u>Rebecca Ravine</u>	<u></u>	<u></u>	<u></u>
<u>Reddie Hall</u>	<u></u>	<u></u>	<u></u>
<u>William E. Hays</u>	<u></u>	<u></u>	<u></u>
<u>Thomas E. Hayhurst</u>	<u></u>	<u></u>	<u></u>
<u>Clitus R. Edmonds</u>	<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>	<u></u>

DATED: 12-17-96.

Sandra E. Kennedy
City Clerk